

lpa74597j

.FO 1

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 745 of 1997

to

Letters Patent Appeal No.745/97 to 762/97

in

SPECIAL CIVIL APPLICATION No 1305 of 1995

and others

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

Hon'ble MR.JUSTICE S.D.PANDIT

=====

1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

@@eu

der? No

@@eunder? No

@@eunder? No

@@eunder

No

@@eunder? No

@@eunder? No

@@eunder? No

@@eunder? No	@@eunder? No	@@eunder? No	
@@eunder? No	@@eunder? No	@@eunder? No	
@@eunder? No	@@eunder? No	@@eunder? No	
@@eunder? No	@@eunder? No	@@eunder? No	@ee
nder? No	@@eunder? No	@@eunder? No	@@eunde
? No	@@eunder? No	@@eunder? No	@@eunder? N
@@eunder? No	@@eunder? No	@@eunder? No	
@@eunder? No	@@eunder? No	@@eunder? No	
@@eunder? No	@@eunder? No	@@eunder? No	
@@eunder? No	@@eunder? No	@@eunder? No	
@@eunder? No	@@eunder? No	@@eunder? No	

5. Whether it is to be circulated to the Civil Judge?
No

M V RANA

Versus

REGIONAL DIRECTOR

Appearance:

MR MUKESH R SHAH for Petitioner
M/S TRIVEDI & GUPTA for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT
Date of decision: 22/07/97

ORAL JUDGEMENT(Per: Thakker.J)

These Letters Patent Appeals are filed against interlocutory order passed passed by the learned single Judge in Special Civil Application No.1305 of 1995 and other companion Special Civil Applications. A common order came to be passed by the learned single Judge in all these petitions on June 26,1997 and vacated the ad-interim relief granted on March 1,1995..

2. The appellants are original petitioners. They have filed above Special Civil Applications for quashing and setting aside the order dated February 14,1995 by which they came to be reverted by respondent no.1 Oil & Natural Gas Corporation (heretinafter referred to as "the Corporation") on the ground that though they were not eligible to be promoted as Assistant Fire Officers, promotions were given to them under a mistake. According to the Corporation, the petitioners were eligible and entitled to be promoted as Fire Inspector Gr.I. Since they were promoted under a mistake, they were liable to be reverted.

3. It also appears from the record that before

reversion was effected, show cause notice was issued to all the appellants on February 4, 1994 and their explanation was sought. They accordingly submitted their reply on February 25, 1994 and since the corporation was satisfied that promotion given to the appellants was contrary to the Oil & Natural Gas Corporation (Recruitment and Promotion/Regulations) 1980, the appellants were liable to be reverted. It is not in dispute by and between the parties that the petitions are admitted, Rule is issued and they are pending for final hearing. Since the learned single Judge was satisfied that promotions were given under mistake and the mistake was rectified by the corporation, the action could not be said to be contrary to law and hence the learned single Judge vacated ad-interim relief. It is against that order that present Letters Patent Appeals were filed.

4. Mr. M.R. Shah, learned advocate for the appellants raised various contentions. He submitted that promotions were given in 1988 and that too with retrospective effect from 1.1.86. According to him, there was no mistake or fault on the part of the appellants. The cases of the appellants were considered on merits and after they were found fit and eligible, such promotions were effected. He submitted that some of the appellants were also considered for higher posts, interviews were held and they were selected. Their names were also suggested for higher post. However, in view of the fact that in the meanwhile, the corporation thought that their promotion was contrary to law that their cases were not considered for further promotion. (This statement, however, is disputed by the learned counsel for the corporation). Mr. Shah submitted that by a common order many employees were promoted. Some of them died, some retired and only few of them are facing reversion. In these circumstances, when ad-interim relief was granted in Special Civil Application and the petitions were pending for final hearing, it was not proper to vacate ad-interim relief and the relief ought to have been continued till final disposal of petitions. Mr. Shah also submitted that initially appellants were on probation. They have successfully completed probation period. Orders were also passed to which our attention was invited. He submitted that the learned Single Judge has observed in the impugned order that the appellants can be compensated in terms of money if ultimately petitions would be allowed. Same analogy would apply in case petitions are dismissed as the appellants can be ordered to repay salary to the corporation. Lastly, it was submitted that doctrine of equitable estoppel would apply and when the appellants were promoted before eight

years retrospectively by giving the effect from 1.1.86, it was not open to the respondent corporation to effect reversion.

5. We do not see substance in any of the contentions raised by Mr. Shah. It is not disputed that Regulations are statutory in nature. They have been framed in exercise of powers under Section 32 of the Oil & Natural Gas Commissions Act, 1959. It is true that all the appellants were promoted in the year 1988 by giving effect from 1.1.86 but it is the case of the corporation that though they were not eligible under the statutory Regulation of 1950, promotions were effected under a mistake. Mistake remains a mistake even after a long lapse of time. It is true that even in such cases, it is expected of an employer to comply with principles of natural justice. We may not be understood to have laid down a general rule to that effect but in the instant cases such a notice was issued and the authority corrected its mistake. Now whether the authority has such a power or not or whether promotions which were effected were in consonance with the Regulations will be decided at the time of final hearing of the petitions. At this stage, in our considered view, it cannot be said that by vacating ad interim relief, the respondent commission had committed any illegality.

6. We are also not impressed by the arguments of Mr. Shah regarding application of the doctrine of equitable estoppel. Our attention was drawn by the counsel to the following decisions.

1. AIR 1970 SC 470 (Rabindra Nath Bose & Ors vs. Union of India & Ors.)
2. 1979(1) SLR 818 (V. Natarajan vs. Principal District Judge, Madurai).
3. 1973 (2) LLJ 363 (Kerala)
(Chandy John Andrew Pereira vs. State of Kerala & Ors.)

7. In our opinion, the law is well settled and it is that doctrine of estoppel does not apply against a statute. Learned counsel submitted that even if general law of estoppel does not apply, equitable estoppel will operate in such a field. We are of the view that doctrine of estoppel would not apply against a statute, as application of such a rule would result into directing the authorities to act contrary to or de hors a statute. It is indeed not the sweep of doctrine of estoppel.

8. For the foregoing discussion, we do not see any reason to interfere with the order passed by the learned Single Judge and all appeals deserve to be dismissed. Accordingly, all Letters against Appeals are dismissed.No order as to costs.

9. Before parting, we may state that all the observations made by us hereinabove have been made for deciding Letters Patent Appeals and as and when petitions will be taken up for final hearing, the learned Single Judge will decide them on their own merits without being influenced in any manner by the observations and discussion made us hereinabove.

10. Mr. Shah for the appellant prays that ad.interim relief granted earlier by the learned Judge in 1995 and operative till to day, may be continued for some time so as to enable his clients to approach higher forum. The request is objected by the other side. In our opinion, the request is reasonable. In the facts and circumstances of the case, ad.interim relief granted earlier is ordered to continue till September 1, 1997.

Dt. 22.7.1997. (C.K.THAKKER J)

(S.D.PANDIT J.)